



Bill Analysis

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Sponsor:

Bill Number: SB 908

Related Bills: See Legislative
History

Introduced: January 8, 2024

SUBJECT

Public Records - Electronic Communication

SUMMARY

Under the Government Code (GOV), this bill would prohibit an elected or appointed official or employee of a public agency from creating or sending a public record using a nonofficial electronic messaging system unless a copy of that message is sent to an official electronic messaging system within 20 days.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

Not applicable.

REASON FOR THE BILL

The reason for this bill is to prevent the use of private electronic devices for information that is a public record unless messages are copied or forwarded to an official account, thus increasing the people's access to public records.

ANALYSIS

This bill would, under the California Public Records Act (CPRA), Division 10 (commencing with Section 7920.000) of Title 1 of the GOV, prohibit an elected or appointed official or employee of a public agency from creating or sending a public record using a nonofficial electronic messaging system unless the official or employee sends a copy of the public record to an official electronic messaging system within 20 days of the original creation or sending of the public record.

This bill would make the enacted provision enforceable in the same manner as enforcement of compliance with any other public record request under the CPRA.

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This bill would not limit disclosure of a public record or require disclosure for a record that does not require disclosure under the CPRA.

This bill would provide the following definitions:

- “Electronic message” means an email or a text message.
- “Electronic messaging system” means a person, including an internet service provider, that is an intermediary in sending or receiving an electronic message or that provides to end users the ability to send or receive an electronic message.
- “Official electronic messaging system” means an electronic messaging system designated by a public agency to be used by an elected or appointed official or employee of a public agency for the official business of the public agency.
- “Public record” includes any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics, as defined in GOV section 7920.530.

Effective/Operative Date

This bill would be effective and operative January 1, 2025.

Federal/State Law

Federal Law

In 1966, Congress enacted the Freedom of Information Act (FOIA) which established the right of any person to request access to a federal agency’s records and information. FOIA also requires federal agencies, upon written request, to disclose records unless specifically protected from disclosure under this act.

In 1996, Congress passed the Electronic Freedom of Information Act Amendments. These amendments increased the right of any person to request, and a federal agency to provide, access to public information in electronic format. These amendments also required federal agencies to provide EFOIA reading rooms through agency FOIA websites. An improper disclosure of federal tax information is punishable as a felony.

State Law

Current state tax law provides that information collected on income tax returns is considered confidential and, unless specifically available for other uses, must be used only to administer the income tax laws. The Franchise Tax Board (FTB) may disclose taxpayer information only in limited circumstances and only to specific agencies as authorized by law. An improper disclosure of state tax information is punishable as a misdemeanor.

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CPRA Act generally requires that state and local agencies make available for inspection “public records,” unless otherwise exempted. State law specifically exempts income tax return information that would be prohibited from disclosure under the Revenue and Taxation Code from disclosure under the CPRA.

Implementation Considerations

None noted.

Technical Considerations

None noted.

Policy Considerations

None noted.

LEGISLATIVE HISTORY

AB 2370 (Levine 2021/2022) Under the GOV, this bill would have required a state agency to retain and preserve every public record, regardless of physical form or characteristics, for at least two years. This bill did not pass out of the Senate Appropriation Committee by the constitutional deadline.

PROGRAM BACKGROUND

Information received, generated, and maintained by the FTB is generally considered confidential unless specifically provided otherwise by statute. The FTB has stringent departmental policies and procedures regarding privacy and disclosure. All employees receive training annually about ensuring the confidentiality of taxpayer information and are given updated procedures on a regular basis. Any violation of these policies and procedures is subject to disciplinary action, punishable by law, or both.

The CPRA provides access to public information the FTB maintains unless the records are exempt from disclosure by law. This may include written or electronic information.

The FTB is exempt from disclosing certain types of information, such as:

- Personnel, medical, or similar files for FTB employees.
- Test questions and scoring keys for employment exams.
- Preliminary drafts of documents or notes not retained by the department.
- Records pertaining to pending litigation.
- Confidential tax return information.

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FISCAL IMPACT

The FTB's costs to implement this bill have yet to be determined. As the bill moves through the legislative process, costs will be determined.

ECONOMIC IMPACT

Revenue Estimate

This bill as introduced on January 8, 2024, would not impact state income or franchise tax revenue.

LEGAL IMPACT

None noted.

APPOINTMENTS

None noted.

SUPPORT/OPPOSITION

To be determined.

ARGUMENTS

To be determined.

LEGISLATIVE CONTACT

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